

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

PRO TECH BUILDERS, INC.
and DAVID HEIL
Respondents

Case Nos.: I-00-10231
I-00-10327

FINAL ORDER OF DISMISSAL

This matter was heard at a final default hearing on December 13, 2000. The Notices of Infraction allege that Respondents did not comply with 21 DCMR 506.2, which requires compliance with an approved erosion and sedimentation plan. The Notices of Infraction allege that the violation occurred on June 15, 2000 in the 1800 block of West Virginia Avenue, N.E.

At the conclusion of the hearing, I left the record open for one week in order for the Government to provide two items: 1) proof of service of the first Notice of Infraction; and 2) a copy of the approved erosion and sedimentation plan that forms the basis of the charge. Neither item has been provided. Because the Respondents are charged with failing to comply with an approved plan, there must be evidence of the plan's contents in order for the Government to meet its burden of proof. Generalized testimony about the usual contents of approved erosion and sedimentation plans is insufficient. Instead, a copy of the actual approved plan at issue (or an equally effective method of proving the contents of the specific plan, *e.g.*, an admission by the Respondent) is required whenever the Government alleges a violation of 21 DCMR 506.2. *DOH*

v. Crystal Pools, Inc., OAH Case No. I-00-10224 (Final Order, January 29, 2001) at 7-8. *See* Fed. R. Evid. 1002-1004 (requiring, with certain limited exceptions, an original document or a duplicate copy in order to prove the contents of the document). Accordingly, the Government's failure to provide a copy of the plan requires dismissal of this case.¹

Therefore, it is, this _____ day of _____, 2001:

ORDERED, that this case is **DISMISSED WITH PREJUDICE**.

/s/ **6-6-01**

John P. Dean
Administrative Judge

¹ Indeed, in another default matter heard on the same day as this case, and also involving an alleged violation of 21 DCMR 506.2, the Government ultimately moved for dismissal of the case after it could not locate a copy of the approved plan. That motion was granted. *DOH v. American Dream Construction*, OAH Case No. I-00-10324 (Order Granting Summary Motion for Dismissal, March 6, 2001). There is no basis in the record of the two cases that supports a different result here.